

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.11733 OF 2021**

**SARITA SADASHIV PADDUNE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...

Mr. R. R. Deshpande h/f Ms. Priyanka R. Deshpande, Advocate for the Petitioner.

Mr. S. G. Sangle, AGP for Respondent Nos.1 to 3.

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**CORAM : NITIN W. SAMBRE AND
S. G. CHAPALGAONKAR, JJ.
DATE : 24th APRIL, 2023.**

PER COURT:-

1. Heard Mr. Deshpande, learned counsel for the petitioner.

2. The challenge in the petition is to the order dated 29th January, 2021 passed by the respondent No. 2/District Collector, Osmanabad thereby confirming the order/communication dated 24th June, 2019 issued by the Tahsildar, Paranda, wherein prayer of the petitioner for issuance of non creamy layer certificate came to be rejected.

3. Few facts necessary for consideration are as under :

The petitioner claims that herself and her husband were in the employment of the Zilla Parishad as teachers and as such were placed in Class III category of Zilla Parishad Service. According to her, her husband Sadashiv Paddune got selected directly in Class I category as a Tahsildar and in view of the

aforesaid, the respondent authorities have proceeded to pass order impugned thereby refusing grant of non creamy layer certificate to the petitioner.

4. By inviting attention of this Court to the provisions of the Government Resolution dated 25th March, 2013, wherein service category of Class I (A) of Group A/Class I Officers of the All India Central and State Services (Direct Recruits), he would urge that admittedly husband of the petitioner was selected and appointed in Class I category of the State Service as Tahsildar. As such aforesaid clause is attracted. He would further claim that in view of plain reading of said clause, petitioner's son cannot be held to be not entitled for non creamy layer certificate as according to him certain exceptions are carved out to the above. By inviting attention of this Court to Clause III read with rider attached to it, he would urge that the son of the petitioner is excluded from the applicability of non issuance of creamy layer certificate rule. So as to substantiate his contentions he would try to elaborate and rely on the language of the above referred clauses which supports his inclusion so as to prevail upon this Court not only to quash and set aside order impugned, but to issue positive directions that the claim of the petitioner does not fall in the creamy layer category. As such she is entitled for issuance of non creamy layer certificate.

5. Mr. Sangle, learned A.G.P. by inviting attention of this Court to the Government Resolution dated 16th December, 2017 would urge that the income of the husband of the petitioner for last three years is above Rs.8,00,000/- in each year and as such, the claim of the petitioner cannot be considered for declaring

their son as not covered by the creamy layer. According to him the case of the petitioner can be considered only in creamy layer category. The husband of the petitioner was directly appointed as Class-I Gazetted Officer and that being so, the benefit of creamy layer policy cannot be extended to the petitioner. In addition his contentions are the Schedule attached to the Government Resolution dated 25th March, 2013 cannot be read to the benefit of the petitioner. So as to substantiate his contentions he has relied on the category (II). As such, he has sought dismissal of the petition.

6. We have considered the rival submissions.

7. It is an admitted position on record that vide Government Resolution dated 16th December, 2017 for qualifying to be entitled for benefit of creamy layer prescribed annual income is Rs.8,00,000/-.

8. The Sub Divisional Officer accordingly has rejected the claim of the petitioner for issuance of the non-creamy layer certificate having regard to the income of the husband of the petitioner exceeding the limit of Rs.8,00,000/-.

9. The aforesaid order of Sub Divisional Officer communicated by the Tahsildar, Paranda on June 24, 2015 was subject matter of challenge before the District Magistrate i.e. Collector. Vide impugned order dated January 29, 2021 the respondent-Collector has upheld the order of the Sub Divisional Officer and rejected the appeal. This petition is accordingly preferred by the petitioner against the concurrent findings.

10. The respondent-State Government vide Government Resolution dated 16th December, 2017 has increased the income limit of Rs.6,00,000/- to Rs.8,00,000/- for the purpose of analyzing the creamy layer candidates. It is an undisputed that the husband of the petitioner, a Class-I Officer (Tahsildar) is earning annual income which is more than Rs.8,00,000/- per year for the last three consecutive years.

The Government Resolution dated 25th March, 2013 issued by the State Government consolidates all the earlier Government Resolutions.

Vide the said Resolution the prayer of the candidates like the petitioner is required to be considered for the purpose of issuance of non-creamy layer certificate.

Though, Mr. Deshpande, learned counsel has invited our attention to the Rule of exclusion provided in category (II), he has unable to satisfy the issue about the annual income of the petitioner exceeding Rs.8,00,000/- for last three consecutive years. This Court is required to be sensitive to the Clause-A of the category (II) of Schedule-A prescribed to the said Resolution which includes the son of the petitioner being excluded from the benefit of the reservation, as the son of the petitioner has to be considered as the one within the creamy layer group. As such, the said Schedule will be of hardly any assistance to the petitioner

11. No error could be noticed in the order impugned. The petition accordingly fails and stands dismissed.

(S. G. CHAPALGAONKAR)
JUDGE

(NITIN W. SAMBRE)
JUDGE